IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 320 OF 2006

Mohd.Ayjul Sararuddin Shaikh. ...Applicant
V/s.
The State of Maharashtra & Anr. ...Respondents

Mr.R.V. Gupta for Applicant.
Ms.S.U. Gajre, APP for the State.

CORAM : V.M. KANADE, J.

DATED : FEBRUARY 22, 2006

P.C. :-

. Heard learned Counsel for the applicant and learned APP for the State.

. The applicant was arrested in connection with C.R.No.118/2005 for the offence punishable under Section 8(c), 20 and 29 of the NDPS Act. The application for bail was filed before the Special Court, however, the Special Court observed as under :-

> "Considering the quantity involved in this case, provisions of Section 37 of the NDPS Act are attracted."

Thereafter, the applicant preferred the second application. The second application was rejected on the ground that there was no change in the circumstance after filing of the chargesheet.

2. Learned Counsel has relied upon a judgment of this Court in the case of **Govindprasad Amritlal Burman V/s. State of Maharashtra, reported in (2004) All MR (Cri.) 635** in which this Court in the said case interalia observed in para 5 as under :-

> "Admittedly, the quantity found with the applicant is less than commercial quantity. So there is no question of application of Sec.37 of the N.D.P.S. Act, having regard to the nature of offence, I think that accused may be released on bail."

3. From the order passed by the Special Judge, it appears that this aspect has not been considered. It is an admitted position that the quantity of Ganja which was found with the accused was 9 kg. and the commercial

quantity in respect of Ganja is 20 kg. Thus, admittedly, the quantity which was found with the accused was not commercial quantity. Inspite of that, the Special Judge has made the observation which is quoted hereinabove. Thus, there appears to be non-application of mind on the part of the Special Judge on this aspect of the matter.

4. In the result, the applicant is directed to approach the Special Court. The Special Court shall consider his application on merits without being influenced by the earlier orders which are passed on 12.12.2005 and 19.1.2006. The application for bail if filed by the applicant be decided, expeditiously, in any event, within a period of four weeks.

. Application is disposed of in the above terms.

(V.M. Kanade, J.)